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No. 90-1667

In the Supreme Court of the United States

OCTOBER TERM, 1991

SPERRY CORPORATION AND
SPERRY WORLD TRADE, INC., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Section 502 of Foreign Relations Authorization Act for Fiscal Years 1986 and 1987, Pub. L. No. 99-93, 99 Stat. 438, requires the Federal Reserve Bank of New York to deduct a 1 1/2% fee from awards made by the Iran-United States Claims Tribunal to United States nationals on claims against Iran. Its purpose is to reimburse the United States Government for expenses it incurs in connection with the arbitration and payment of such claims. The question presented is:

Whether Section 502, which was added to a pending foreign relations authorization bill by the Senate, is a "Bill[] for raising Revenue" within the meaning of the Origination Clause of the Constitution (Art. I, § 7, Cl. 1), which requires revenue bills to originate in the House of Representatives.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-31a) is reported at 925 F.2d 399. The prior opinion of the court of appeals (Pet. App. 46a-56a), which was reversed by this Court (Pet. App. 32a-45a; 110 S. Ct. 387), is reported at 853 F.2d 904. The opinion of the United States Claims Court (Pet. App. 57a-70a) is reported at 12 Cl. Ct. 736. A prior oral ruling of the Claims Court (Pet. App. 71a-96a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 31, 1991. The petition for a writ of certiorari was filed on May 1, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. During the 1970s, petitioners had computer leasing and data processing contracts with the Government of Iran. Pet. App. 58a. On November 4, 1979, the American Embassy in Tehran was seized and our diplomatic personnel were taken hostage. In response to that incident and a threat by Iran to withdraw its assets from the United States, the President blocked the transfer of any property of the Government of Iran in the United States. Exec. Order No. 12,170, 3 C.F.R. 457 (1980). The Secretary of the Treasury issued implementing regulations declaring null and void any unlicensed attachment or judgment affecting blocked Iranian property. *Dames & Moore* v. *Regan*, 453 U.S. 654, 662-663 (1981). In July 1980, petitioners filed a damage action against Iran in the United States District Court for the District of Columbia, and they later obtained pre-judgment attachments of Iranian assets in the United States. *United States* v. *Sperry Corp.*, 110 S. Ct. 387, 392 (1989) (*Sperry I*).

2. On January 19, 1981, the United States and Iran entered into an agreement, commonly known as the "Algiers Accords."[1] The Accords provided for release of the American hostages, unfreezing of Iranian assets in the United States, and resolution of claims by the nationals of each party against the government of the other. The Accords established

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[1] Declaration of the Government of the Democratic and Popular Republic of Algeria; Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, *both reprinted in* 19 Bureau of Public Affairs, U.S Dep't of State, *Selected Papers* 2-5 (Mar. 12, 1981).

the Iran-United States Claims Tribunal to decide such claims, and a Security Account, into which $1 billion of frozen Iranian assets were deposited, for payment of claims of U.S. nationals against Iran. Awards made by the Tribunal in favor of U.S. claimants are paid from the Security Account to the Federal Reserve Bank of New York, which then pays the claimants. *Sperry I*, 110 S. Ct. at 391-392.

To implement the Algiers Accords, President Carter issued a series of Executive Orders that generally revoked all licenses permitting the exercise of any right with regard to Iranian assets; nullified all non-Iranian interests in such assets acquired after November 14, 1979; and directed the transfer of blocked Iranian financial assets to the Federal Reserve Bank of New York, for disposition as directed by the Secretary of the Treasury. Exec. Order Nos. 12,277-12,281, 3 C.F.R. 105-113 (1982). On February 24, 1981, President Reagan issued Executive Order No. 12,294, which ratified the Orders issued by President Carter; suspended all claims that may be presented to the Tribunal; and provided that such claims "shall have no legal effect in any action now pending in any court of the United States." 3 C.F.R. 139 (1982). Petitioners thereafter filed a claim against Iran with the Tribunal. *Sperry I*, 110 S. Ct. at 391-392.

3. On June 7, 1982, before any awards had been paid to U.S. claimants, the Treasury Department issued a "directive license" requiring the Federal Reserve Bank to deduct 2% from each award and to pay that amount into the Treasury "to reimburse the United States Government for costs incurred for the benefit of U.S. nationals who have claims against Iran." 47 Fed. Reg. 25,243 (1982). The directive

license was issued pursuant to the Independent Offices Appropriations Act (IOAA), now codified at 31 U.S.C. 9701, which provides that government services should be "self-sustaining to the extent possible" and authorizes federal agencies to establish fair charges for services they provide, based upon costs to the Government, the value of the services, and the public policy and interests to be served. See *Skinner* v. *Mid-America Pipeline Co.*, 490 U.S. 212, 223-224 (1989).

On July 8, 1982, one month after issuance of the directive license, petitioners and Iran filed a request with the Tribunal for an "Award on Agreed Terms," which the Tribunal granted. Award on Agreed Terms, No. 10-205-2, Iran-United States Claims Tribunal (Sept. 14, 1982). When the Federal Reserve Bank received payment of the award, it deducted the 2% charge ($56,000) pursuant to the directive license and paid the balance of $2,744,000 to petitioners. *Sperry I*, 110 S. Ct. at 392.

4. Petitioners then filed this action in the Claims Court seeking to recover from the United States the 2% fee deducted from the Tribunal award. On May 1, 1985, the Claims Court held in an oral decision that the directive license violated the IOAA.

In response to that ruling, Congress enacted the Iran Claims Settlement Act as Title V of the Foreign Relations Authorization Act for Fiscal Years 1986 and 1987, Pub. L. No. 99-93, §§ 501-505, 99 Stat. 437-439, 50 U.S.C. 1701 note (Supp. IV 1986). The Authorization Act as a whole contains more than 100 sections that principally concern appropriations for the State Department and related activities. Title V addresses several issues related to the resolution of claims against Iran, including confidentiality of records (§ 505) and authorization for the Foreign Claims Settlement Commission to determine the valid-

ity and amount of claims of U.S. nationals against Iran (and for the Secretary of the Treasury to pay such claims) in the event that the United States and Iran entered into an en bloc settlement of small claims (§ 501).[2] Section 502, at issue here, requires the Federal Reserve Bank of New York to deduct from Tribunal awards "an amount equal to 1 1/2 percent of the first $5,000,000 and 1% of any amount over $5,000,000, as reimbursement to the United States Government for expenses incurred in connection with the arbitration of claims of United States claimants against Iran before that Tribunal and the maintenance of the Security Account." 99 Stat. 438. This requirement was made effective as of June 7, 1982, the date of the directive license under the IOAA. *Ibid.*

5. Although Section 502 mooted petitioners' statutory challenge to the assessment of a fee,[3] petitioners contended that Section 502 is unconstitutional under the Just Compensation, Due Process, and Origination Clauses of the Constitution. The Claims Court rejected those contentions. Pet. App. 57a-70a. It held, *inter alia*, that the Senate's addition of the user fee provision to the foreign relations authorization bill previously passed by the House of Representatives did not violate the Origination Clause,

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[2] On May 13, 1990, the United States and Iran entered into such a settlement. Award on Agreed Terms, Award No. 483, Iran-United States Claims Tribunal (June 22, 1990). On June 28, 1990, pursuant to Section 501 of the Iran Claims Settlement Act, the State Department transferred to the Foreign Claims Settlement Commission approximately 3100 claims that were covered by the settlement.

[3] The portion of the 2% fee deducted pursuant to the IOAA that exceeded the 1½% fee authorized by Section 502 was refunded to petitioners.

which provides: "All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." Art. I, § 7. Relying on *Twin City Bank* v. *Nebeker*, 167 U.S. 196, 202-203 (1897), the Claims Court held that Section 502 is outside the scope of the Origination Clause because it provides for collection of fees as reimbursement for specific services rendered by the government, rather than raising revenue to support the government generally. Pet. App. 66a-68a.

The court of appeals reversed, holding Section 502 unconstitutional on the ground that it effected a taking of private property without just compensation. The court of appeals found it unnecessary to consider petitioners' Due Process and Origination Clause challenges. Pet. App. 46a-56a.

This Court in turn reversed, holding that Section 502 does not violate the Just Compensation or Due Process Clause. *Sperry I*, 110 S. Ct. at 393-397. The Court chose not to reach the Origination Clause issue, because it had directed the parties in *United States* v. *Munoz-Flores*, 110 S. Ct. 1964 (1990), to brief the question whether claims based on that Clause are justiciable, and because the Court believed it would in any event benefit from the views of the court of appeals. The Court therefore remanded for further proceedings. 110 S. Ct. at 397.

6. After *Munoz-Flores* held Origination Clause claims to be justicable, 110 S. Ct. at 1968-1972, the court of appeals in this case held that the user fee provision of the Iran Claims Settlement Act is outside the scope of that Clause. Pet. App. 1a-11a. It first rejected the per se rule urged by petitioners, under which a user fee originating in the Senate would violate the Origination Clause whenever it is

not included in the same bill that establishes the program the fee is intended to support. *Id.* at 4a-7a. In the court's view, such a rule would be inconsistent with the admonition, drawn from *Nebeker*, 167 U.S. at 202, "against attempting a general statement to cover every possible phase in determining whether bills are violative of the Origination Clause." Pet. App. 5a. Accordingly, although *Munoz-Flores* indicated that simultaneous enactment of a program and a user fee to support that program is *sufficient* to render a Senate-originated user fee permissible under the Origination Clause, 110 S. Ct. at 1972, the court of appeals concluded that simultaneous enactment is not in every case constitutionally *necessary*. Instead, the court reasoned, it must examine "*what* was enacted, not *when* was the enactment." Pet. App. 6a.

In examining "what was enacted," the court of appeals applied this Court's formulation that "revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue." Pet. App. 7a (quoting *Nebeker*, 167 U.S. at 202). The court of appeals agreed with the Claims Court that under that standard, raising revenue was not the purpose of Section 502. Pet. App. 7a-11a.[4] It rejected petitioners' contention that Section 502's provision for payment of the fees into the general Treasury, rather than a special account, establishes that revenue raising is its primary purpose. In the court's view, that feature does not undermine the declaration by Con-

[4] The court also rejected petitioners' attempt to minimize features of the Act that were unrelated to the user fee, explaining that although "some of those other purposes are inapplicable to [petitioners'] present claim," the "nature of a litigant's claim cannot retroactively control the nature of a bill." Pet. App. 8a.

gress in Section 502 itself that the fees are deducted from Tribunal awards as reimbursement to the United States for expenses it has incurred on behalf of claimants. Pet. App. 10a.[5]

ARGUMENT

Petitioners contend that because Section 502 was added to the foreign relations authorization bill by the Senate, it was enacted in violation of the Origination Clause of the Constitution, which provides that "All Bills for raising Revenue shall originate in the House of Representatives." The court of appeals correctly held, however, that Section 502 is not a "Bill[] for raising Revenue" within the meaning of the Origination Clause and that it therefore was not required to originate in the House of Representatives. That ruling does not conflict with any decision of this Court or any other court of appeals. To the contrary, it rests on this Court's consistent interpretation of the Origination Clause, which was recently reaffirmed in *Munoz-Flores*. Further review is not warranted.

1. As this Court has held, "the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue." *Nebeker*, 167 U.S. at 202 (quoted in part in *Munoz-Flores*, 110 S. Ct. at 1972); accord *Millard* v. *Roberts*, 202 U.S. 429, 436-437 (1906). In *Nebeker*, the Court

[5] Judge Mayer dissented, concluding that Section 502 was "intended primarily to raise revenue" because it did not simultaneously create a particular program and raise revenue to support that program and did not provide for deposit of the proceeds into a special account. Pet. App. 12a-31a.

rejected an Origination Clause challenge to a statute establishing a national currency, which imposed a "tax" on notes in circulation in order to defray the expenses involved. The Court held that the statute was "clearly not a revenue bill which the Constitution declares must originate in the House of Representatives," because the purpose of the "tax" was not to raise revenue for the general operation of the government. 167 U.S. at 202-203. Similarly, in *Munoz-Flores*, the Court held that the statutory authorization of special assessments against persons convicted of federal crimes is not a "Bill[] for raising Revenue" because it is intended to defray the costs of compensating victims of crime. 110 S. Ct. at 1972-1974. See also *Millard*, 202 U.S. at 435-437 (assessment for public improvements not a tax within meaning of Origination Clause); *South Carolina ex rel Tindal* v. *Block*, 717 F.2d 874, 887 (4th Cir. 1983) (50-cent deduction from proceeds of milk sales to defray costs of price-support program and to reduce overproduction not a bill for raising revenue), cert. denied, 465 U.S. 1080 (1984).[6]

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[6] The Court has drawn a similar distinction between taxes and fees in related contexts. See *Massachusetts* v. *United States*, 435 U.S. 444, 451-463 (1978) (flat fee on all civil aircraft to recoup part of cost of air system is user fee that does not violate State's immunity from federal taxation); *Clyde Mallory Lines* v. *Alabama ex rel. State Docks Commission*, 296 U.S. 261, 265-266 (1935) (fee charged vessels entering port to defray cost of harbor policing not "duty of tonnage" or tax on vessels' privilege of access); *Head Money Cases*, 112 U.S. 580, 595-596 (1884) (50-cent fee assessed upon ship owners for government's temporary care of immigrants not a tax, but a charge for services rendered); *Morgan's Steamship Co.* v. *Louisiana Board of Health*, 118 U.S. 455, 461-463 (1886) (fee for examination and fumigation of vessels passing quarantine station not a tonnage tax, but a fee for serv-

These principles establish that Section 502 likewise is not a "Bill[] for raising Revenue" within the meaning of the Origination Clause. The purpose of the Foreign Relations Authorization Act as a whole was to authorize appropriations for the State Department and related agencies. Title V of the Act, of which Section 502 is a part, addresses several issues dealing with the resolution of claims of U.S. nationals against Iran. Moreover, Section 502, even if considered alone, plainly does not "levy taxes in the strict sense of the word." *Nebeker*, 167 U.S. at 202. As the Court pointed out two Terms ago in this very case, 110 S. Ct. at 392, and as the court of appeals emphasized on remand, Pet. App. 10a, Section 502 states that the fee is intended "as reimbursement to the United States Government for expenses incurred in connection with the arbitration of claims of United States claimants against Iran before [the] Tribunal and the maintenance of the Security Account." [7] Its

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ices); see also *Moon* v. *Freeman*, 379 F.2d 382, 391-392 (9th Cir. 1967) (statute requiring purchase of wheat export certificate to defray cost of government wheat purchases to guarantee farmers' income not prohibited tax on exports, but valid regulation of commerce).

[7] The legislative history reinforces the purpose of Section 502 set forth in the statutory text. It shows that Section 502 was intended to reimburse the United States for such costs as the payment of one-half of the annual expenses of the Tribunal; one-half of the management fees paid to the depository of the Security Account; expenses of the Federal Reserve Bank of New York in marshalling Iranian assets for transfer to the Security Account and in receiving and distributing the payment of awards made by the Tribunal; the State Department's costs in maintaining offices in Washington and at The Hague to facilitate filing of claims, service of Tribunal documents, and presentation of positions on major issues of common importance to U.S. claimants; and efforts by the Treasury and Justice Departments to ensure compliance with the

purpose thus is not to raise revenues to support the operation of the government generally.

Petitioners contend (Pet. 22) that what they concede to be the purpose of Section 502—"to authorize recovery of costs"—"identifies the Act as primarily a bill for raising revenue." But as we have just explained, it is that feature of Section 502 that confirms it is *not* a bill for raising revenue—*i.e.*, a tax. "A tax is not an assessment of benefits. It is * * * a means of distributing the burden of the cost of government." *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 521-522 (1937). Section 502, by contrast, assesses a fee specifically against those who benefit from the Tribunal and Security Account.

2. a. Petitioners also err in contending (Pet. 25-28) that Section 502 is a bill for raising revenue because it was enacted four years after the United States adhered to the Algiers Accords, which established the Tribunal and Security Account. Nothing in the Origination Clause suggests that a bill authorizing assessment of a user fee upon those who benefit from a government program becomes a bill for raising revenue within the meaning of the Clause if the user fee is not enacted at the same time as the program it supports. The text of the Clause focuses on the purpose of the bill—whether it is one "for" raising revenue—not the timing of its enactment.

Algiers Accords. See *Iran Claims Legislation: Hearing on S. 771 and S. 1166 Before the Senate Comm. on Foreign Relations*, 99th Cong., 1st Sess. 14-15, 26-32 (1985); *Iran Claims Act: Hearing on H.R. 3241 Before the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Affairs*, 98th Cong., 1st Sess. 4-5, 9, 13-16 (1983); *Claims Against Iran: Hearing Before the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Affairs*, 97th Cong., 2d Sess. 4-5, 6, 13-17, 27 (1982).

Timing likewise bears no relation to the intent of the Framers in adopting the Clause—namely, "to give the origination power to the House on the ground that the Chamber [that] is more accountable to the people should have the primary role in raising revenue." *Munoz-Flores*, 110 S. Ct. at 1971. User fees, which do not raise revenues for the general support of the government, fall outside this intent irrespective of whether they are authorized simultaneously with, or subsequent to, the programs they support. Petitioners' submission also makes no common sense: it would allow the Senate to originate a government program that includes a user fee, but would not allow the Senate to originate an increase in the fee at a later time.[8]

As the court of appeals concluded (Pet. App. 5a-6a), although the statute at issue in *Munoz-Flores* both established the program for compensating victims of crime and provided for special assessments to fund that program, *Munoz-Flores* does not hold that simultaneous enactment is a necessary condition for finding that a bill is not one for raising revenue. Nor do any of the Court's prior cases so hold. Petitioners rely (Pet. 26-27) on the statement in *Munoz-Flores* that the assessments in *Millard* and *Nebeker* were "passed as part of a particular program to provide money for that program." 110 S. Ct. at 1973.

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[8] Petitioners' objection that Section 502 was enacted four years after the Algiers Accords is unpersuasive for the additional reasons that: (1) an Act of Congress was not necessary to enable the President to settle the claims of U.S. nationals against Iran in the first place, see *Dames & Moore*, 453 U.S. at 678-688, and (2) Section 502 was a curative statute designed to ensure continued collection of a user fee that the Treasury Department had assessed pursuant to the IOAA, which was enacted *before* the Algiers Accords.

But this passage equally describes Section 502: it was enacted in the Iran Claims Settlement Act, which is part of the overall "program" for settlement of U.S. claims against Iran. But even if the passage is read in the way petitioners urge—as commenting upon the simultaneous enactment, rather than the assessment's integral part in the government program —it does not suggest that simultaneous enactment is *required* in order for a user fee to fall outside the scope of the Origination Clause.

b. Petitioners' objection (Pet. 28-32) that the fees deducted from Tribunal awards are not placed in a special Treasury account is equally without merit. The validity of a Senate-originated measure under the Origination Clause turns on the nature and purpose of the fee when it is assessed, not the manner in which the internal accounts of the United States Government are kept. Accordingly, a fee to defray the costs of administering a government program does not lose that character when it is paid into the general Treasury, especially since the claims-adjudication apparatus established by the Tribunal and Security Account is ultimately funded out of the general Treasury.

3. Contrary to petitioners' assertion (Pet. 34-40), the court of appeals' decision does not threaten the continued vitality of the Origination Clause. The court simply declined to adopt petitioners' rigid rule that a user fee proposed by the Senate violates the Origination Clause whenever it is not included in the legislation establishing the program to which the fee relates. Instead, consistent with this Court's caution in *Nebeker* against attempting to lay down a single, all-encompassing rule, 167 U.S. at 202, the court of appeals examined "*what* was enacted, not *when* was the enactment." Pet. App. 4a-6a. The court ex-

pressly disavowed any suggestion that "the Senate may constitutionally originate and enact revenue raising bills so long as it merely describes such bills as 'user fees' or 'reimbursement' of governmental program expenses." Pet. App. 10a, n.5. And there was no such pretext here. The language and legislative history of Section 502, its roots in the user fee assessed under the IOAA, and this Court's decision in *Sperry I* all unequivocally establish that the deductions required by Section 502 are genuine user fees tailored to reimburse the government for a portion of the cost of identified services, not disguised taxes of a general revenue-raising nature.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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